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Government of Kerala
1978

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KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. XXIII] Trivandrum, Monday, 13th November 1978 / 22nd Karthika 1900 [No. 723

GOVERNMENT OF KERALA

Law (Legislation-C) Department

NOTIFICATION

No. 10283/Leg. C3/78/Law. *Dated, Trivandrum, 13th November, 1978/ 22nd Karthika, 1900.*

The following Act of the Kerala State Legislature is hereby published for general information. The Bill as passed by the Legislative Assembly received the assent of the Governor on the 6th day of November, 1978.

By order of the Governor,

K. VISWANATHAN NAIR,

Law Secretary.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1978.

33/4164/MC

ACT 31 OF 1978

THE TODDY WORKERS' WELFARE FUND (AMENDMENT) ACT, 1978

An Act, to amend the Toddy Workers' Welfare Fund Act, 1969.

Preamble.—WHEREAS it is expedient to amend the Toddy Workers' Welfare Fund Act, 1969, for the purposes hereinafter appearing;

BE it enacted in the Twenty-ninth Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Toddy Workers' Welfare Fund (Amendment) Act, 1978.

(2) It shall come into force on such date as the Government may, by notification in the Gazette, appoint, and different dates may be appointed for different provisions of this Act.

2. *Amendment of section 1.*—In section 1 of the Toddy Workers' Welfare Fund Act, 1969 (22 of 1969) (hereinafter referred to as the principal Act), in sub-section (1), for the words "Toddy Workers' Welfare Fund Act", the words "Kerala Toddy Workers' Welfare Fund Act" shall be substituted.

3. *Amendment of section 2.*—In section 2 of the principal Act,—

(i) in clause (a), for the words "Toddy Workers' Welfare Fund Board", the words 'Kerala Toddy Workers' Welfare Fund Board" shall be substituted;

(ii) in clause (b), for the words "a scheme", the words "the scheme" shall be substituted;

(iii) in clause (c), for the words "distribution or sale", the words "distribution, storage or sale" shall be substituted;

(iv) in clause (d), for the words "transport or sale", in both the places where they occur, the words "transport, storage or sale' shall be substituted;

(v) for clause (e), the following clause shall be substituted, namely:—

"(e) "fund" means the Kerala Toddy Workers' Welfare Fund established under the scheme;";

(vi) for clause (g), the following clauses shall be substituted, namely:—

"(g) "member" means a member of the fund and includes any person eligible to become a member of the fund;

(gg) "prescribed" means prescribed by rules made under this Act;";

(vii) in clause (i), for the words "a scheme", the words "the scheme" shall be substituted.

4. *Amendment of section 3.*—In section 3 of the principal Act, in sub-section (1), for the words "Toddy Workers' Welfare Fund Scheme", the words "Kerala Toddy Workers' Welfare Fund Scheme" shall be substituted.

5. *Amendment of section 5.*—In section 5 of the principal Act, in sub-section (1), the words "either prospectively or retrospectively" shall be inserted at the end.

6. *Amendment of section 6.*—In section 6 of the principal Act,—

(a) in sub-section (1), for the words "Toddy Workers' Welfare Fund Board", the words "Kerala Toddy Workers' Welfare Fund Board" shall be substituted;

(b) after sub-section (6), the following sub-section shall be inserted, namely:—

"(7) The Board may, with the previous approval of the Government, delegate to its Chairman or to the Chief Welfare Fund Inspector or to any Welfare Fund Inspector such of its powers and functions under this Act or the scheme as it may consider necessary for the efficient administration of the fund, subject to such restrictions and conditions, if any, as it may specify:

Provided that no delegation shall be made under this sub-section unless all the members present support such delegation.".

7. *Insertion of new section 8A.*—After section 8 of the principal Act, the following section shall be inserted, namely:—

"8A. *Provisional assessment of contribution.*—(1) Every employer shall, pending determination under section 8 of the amount due from him, pay every month by way of advance contribution an amount equivalent to one-twelfth of the amount payable annually in respect of his shop according to the latest determination under the said section.

(2) The advance contribution for a month shall become payable on or before the 5th day of the succeeding month.

(3) Where the advance contribution is not paid on or before the due date, the Welfare Fund Inspector shall issue a notice to the defaulter showing the amount of arrears, and if the amount is not paid within seven days of the receipt of such notice, it may be recovered in the same manner as arrears of land revenue.

(4) The amount paid under this section for an year shall be adjusted against the amount determined under section 8 for that year.".

8. *Amendment of section 9.*—In section 9 of the principal Act, after the words "be recovered", the words "together with interest thereon at the rate of nine per cent per annum" shall be inserted.

9. *Amendment of section 14.*—In section 14 of the principal Act,—

(a) in sub-section (1), for the words "three months" and "five hundred rupees", the words "six months" and "one thousand rupees" shall respectively be substituted;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—

"(2A) No court inferior to that of a Judicial Magistrate of the first class shall try any offence punishable under this Act.";

(c) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) No court shall take cognisance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made with the previous sanction of the Chief Welfare Fund Inspector.".

10. *Insertion of new sections 14A and 14B.*—After section 14 of the principal Act, the following sections shall be inserted, namely:—

"14A. *Enhanced punishment for default in payment of employees' contributions already deducted.*—(1) Whoever makes default in the payment of the employees' share of the contribution to the fund after having deducted it from the wages of the employees, in accordance with the provisions of this Act or the scheme, shall be punishable with imprisonment for a term which may extend to one year but which shall not be less than three months and with fine which may extend to four thousand rupees.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), an offence under sub-section (1) shall be cognizable.

14B. *Enhanced punishment for second or subsequent offence.*—Whoever, having been convicted by a court of an offence punishable under this Act, commits the same offence again shall be punishable for every such subsequent offence with imprisonment for a term which may extend to one year but which shall not be less than three months and with fine which may extend to four thousand rupees.".

11. *Insertion of new sections 15A, 15B and 15C.*—After section 15 of the principal Act, the following sections shall be inserted, namely:—

"15A. *Directions by Government.*—The Government may, after consultation with the Board, give to the Board general instructions to be followed by the Board.

(2) In the exercise of its powers and performance of its duties under this Act, the Board shall not depart from any general instructions issued under sub-section (1), except with the previous permission of the Government.

15B. *Power to order inquiry.*—(1) The Government may, at any time, appoint any person to inquire into the working of the Board and to submit a report to the Government.

(2) The Board shall give the person so appointed all facilities for the proper conduct of the inquiry and furnish to him such documents, accounts or information in possession of the Board as he may require.

15C. *Power to supersede the Board.*—(1) If, on consideration of the report under section 15B or otherwise, the Government are of opinion that the Board has persistently made default in the performance of the duties imposed on it by or under the provisions of this Act or the scheme or has exceeded or abused its powers, the Government may, by notification in the Gazette, supersede the Board for such period not exceeding six months as may be specified in the notification:

Provided that, before issuing a notification under this sub-section, the Government shall give a reasonable opportunity to the Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the Board.

(2) Upon the publication of a notification under sub-section (1),—

(a) all the members of the Board shall, as from the date of such publication, vacate their offices as such members;

(b) all the powers and duties which may be exercised or performed by the Board shall, during the period of supersession.

be exercised or performed by such officer or officers as may be specified in the notification;

(c) all funds and other properties vested in the Board shall, during the period of supersession, vest in the Government.

(3) On the expiration of the period of supersession specified in the notification issued under sub-section (1), the Government shall re-constitute the Board in the manner provided in section 6.".

12. *Omission of section 16.*—Section 16 of the principal Act shall be omitted.

13. *Insertion of new section 17A.*—After section 17 of the principal Act, the following section shall be inserted, namely:—

"17A. *Bar of jurisdiction of civil courts.*—No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter which is by or under this Act required to be settled, decided or dealt with or to be determined by the Government or the Board or the Chief Welfare Fund Inspector or any Welfare Fund Inspector.".

14. *Insertion of new section 19.*—After section 18 of the principal Act, the following section shall be inserted, namely:—

"19. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for the purpose of carrying into effect the provisions of this Act.

(2) Every rule made under this Act shall be laid, as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.".

15. *Amendment of Schedule.*—In the Schedule to the principal Act,—

(a) after item 2, the following item shall be inserted, namely:—

"2A. The payment by the employer of such sum of money as may be necessary to meet the cost of administering the fund and the rate at which and the manner in which such payment shall be made".;

(b) in item 3, for the words "Toddy Workers' Welfare Fund Board", the word "Board" shall be substituted;

(c) after item 16, the following items shall be inserted, namely:—

"16A. The rate of gratuity payable to members and the conditions for such payment.

16B. The conditions under which any amount due to the Board may be written off.".

Government of Kerala
1978

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GOVERNMENT OF KERALA

Law (Leg. C) Department

NOTIFICATION

Dated, Trivandrum, 13th November 1978/
22nd Karthika, 1900.

No. 15445/Leg. C3/78/Law.

The following Ordinance promulgated by the Governor on the 7th day of November, 1978, is hereby published for general information.

By order of the Governor,

K. VISWANATHAN NAIR,
Law Secretary.

PRINTED AND PUBLISHED BY THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM, 1978.

33/4165/MC.

ORDINANCE No. 26 OF 1978

THE KERALA CASHEW FACTORIES (REQUISITIONING) ORDINANCE, 1978

Promulgated by the Governor of Kerala in the Twenty-ninth Year of the Republic of India.

AN

ORDINANCE

to provide for the requisitioning of cashew factories leased out to the Kerala State Cashew Development Corporation.

Preamble.—WHEREAS certain cashew factories had been leased out by the owners thereof to the Kerala State Cashew Development Corporation Limited, which is a company owned by the Government of Kerala;

AND WHEREAS such cashew factories were at the time of the lease either closed down or run by persons other than the owners thereof;

AND WHEREAS the term of lease in respect of some of such cashew factories has expired and the owners of some of such factories are not willing to extend the term of the lease;

AND WHEREAS suits have been filed in the courts by the owners of some of such cashew factories for delivery of possession thereof;

AND WHEREAS in the interests of the workers of the cashew factories it is considered necessary to enable the said Corporation to continue in possession and management of such of those cashew factories which if given back to the owners thereof could not be run properly and in accordance with law and would either be sold or leased out to private individuals;

AND WHEREAS the Legislative Assembly of the State of Kerala is not in session and the Governor of Kerala is satisfied that circumstances exist which render it necessary for her to take immediate action;

AND WHEREAS instructions from the President have been obtained in pursuance of the proviso to clause (1) of article 213 of the Constitution of India;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 213 of the Constitution of India, the Governor of Kerala is pleased to promulgate the following Ordinance:—

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the Kerala Cashew Factories (Requisitioning) Ordinance, 1978.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force at once.

2. *Definitions.*—In this Ordinance, unless the context otherwise requires,—

(a) "Cashew factory" means a factory as defined in the Factories Act, 1948 (Central Act 63 of 1948), wherein processing of cashew nuts is being carried on and includes the factory building, the site thereof and the buildings and lands appurtenant thereto used or necessary for, or in connection with, the working of the factory;

(b) "Corporation" means the Kerala State Cashew Development Corporation Limited, incorporated under the Companies Act, 1956 (Central Act 1 of 1956);

(c) the expression "person interested", in relation to any cashew factory, includes all persons claiming or entitled to claim an interest in the amount payable on account of the requisitioning of that factory under this Ordinance;

(d) "prescribed" means prescribed by rules made under this Ordinance;

(e) "processing", with reference to cashewnuts, includes extraction of cashewnut oil, roasting, shelling, peeling, grading and treating of cashewnuts;

(f) "Tribunal" means the Tribunal appointed under section 6.

3. *Power to requisition cashew factories.*—(1) Where the Government are satisfied that if the owner of a cashew factory which is in the possession of the Corporation under a lease, whether current or time-expired, is put in possession thereof, such owner could not run that factory properly and in accordance with law and would either sell it or lease it out to any private individual and there would be large scale unemployment of the workers of that factory or their conditions of service would be adversely affected, the Government may, notwithstanding any judgment, decree or order of any court, by order published in the Gazette, requisition that cashew factory for such period not exceeding five years as may be specified in the order and may make such further orders as appear to them to be necessary or expedient in connection with the requisition:

Provided that before making an order under this sub-section in respect of a cashew factory, the Government shall give the owner of that factory and every person interested in that factory a notice of their intention to take action under this sub-section and the grounds therefor and consider the objections that may be preferred in pursuance of such notice.

(2) Where a cashew factory is requisitioned under sub-section (1), such cashew factory together with all machinery, other accessories and other movable properties as were immediately before the date of publication of the order under sub-section (1) in the possession of the Corporation and all books of account, registers and other documents relating thereto shall vest in the Government with effect from the said date.

(3) The Government may, by order in writing, direct that a cashew factory vested in them under sub-section (2) shall, instead of continuing to vest in them, vest in the Corporation with effect from such date, not being a date earlier than the date of publication of the order under sub-section (1), as may be specified in the order.

(4) Where an order vesting a cashew factory in the Corporation is made under sub-section (3), all rights, liabilities and obligations of the Government in relation to such factory shall, on and from the date of such vesting, be deemed to have become the rights, liabilities and obligations respectively of the Corporation.

4. *Release from requisition.*—(1) The Government may at any time release from requisition any cashew factory requisitioned under section 3 and thereupon the Government or the Corporation, as the case may be, shall as far as possible restore the factory in as good a condition as it was when possession thereof was taken by virtue of the lease executed by it with the owner of the cashew factory, subject to the provisions contained in such lease and to the changes caused by reasonable wear and tear and irresistible force.

(2) Where any cashew factory is to be released from requisition under sub-section (1), the Government may, after such inquiry, if any, as they may in any case consider necessary to make or cause to be made, specify by order in writing the person to whom possession of such cashew factory is to be given.

(3) The delivery of possession of a cashew factory to the person specified in an order under sub-section (2) shall be a full discharge of the Government and, in the case of a cashew factory vested in the Corporation, also of the Corporation, from all liabilities in respect of such cashew factory, but shall not prejudice any right in respect of that cashew factory which any other person may be entitled by due process of law to enforce against the person to whom possession of the cashew factory is given.

(4) Where any person to whom possession of a cashew factory is to be given is not found and has no agent or other person empowered to accept delivery on his behalf, the Government shall cause a notice declaring that the cashew factory is released from requisition to be affixed on some conspicuous part of the premises of the cashew factory and shall also publish the notice in the Gazette.

(5) Where a notice referred to in sub-section (4) is published in the Gazette, the cashew factory specified in such notice shall cease to be subject to requisition on and from the date of such publication and shall be deemed to have been delivered to the person entitled to possession thereof, and the Government or the Corporation shall not be liable for any compensation or other claim in respect of such cashew factory for any period after the said date.

(6) Where any cashew factory requisitioned under section 3 or any material part thereof is wholly destroyed or rendered substantially and permanently unfit for carrying on processing of raw cashew nuts by reason of fire, earthquake, tempest, flood or violence of any mob or other irresistible force, the requisition shall, at the option of the Government, be void:

Provided that the benefit of this sub-section shall not be available to the Government where the injury to such cashew factory is caused by any wrongful act or default of the Government or the Corporation.

5. *Payment of amount.*—(1) Where any cashew factory is requisitioned under this Ordinance, there shall be paid rent for that cashew factory, the amount of which shall be determined in the manner and in accordance with the principles hereinafter set out, that is to say,—

(a) where the amount of rent can be fixed by agreement, it shall be paid in accordance with such agreement;

(b) where no such agreement can be reached, the Government shall by order—

(a) determine the rent at a rate which shall be in excess of the amount of rent which was being paid by the Corporation for that cashew factory immediately before the date of publication of the order under sub-section (1) of section 3, by twenty-five per cent of such amount; and

(b) specify the person or persons to whom such rent shall be paid.

(2) Any person aggrieved by an order of the Government under sub-section (1) may, within thirty days from the date of such determination, apply to the Tribunal for modification of such order:

Provided that the Tribunal may entertain the application after the expiry of the said period of thirty days if it is satisfied that the applicant was prevented by sufficient cause from presenting the application in time.

(3) In determining the amount of rent payable for a cashew factory requisitioned under this Ordinance, the Tribunal shall have regard to—

(a) the nature and plinth area of the buildings and other structures and the value of the accessories and fixtures *minus* depreciation at the rate of five per cent per annum subject to a maximum of fifty per cent depreciation;

(b) the capacity of the cashew factory for processing raw cashew nuts;

(c) rate of rent of other cashew factories in the locality at the commencement of this Ordinance; and

(d) expenses on account of re-occupying the premises upon release from requisition.

6. *Tribunal.*—(1) The Government shall, by notification in the Gazette, appoint a Tribunal to exercise the powers conferred on the Tribunal under this Ordinance.

(2) The Tribunal shall consist of a person who is a District Judge.

7. *Appeals from decision of Tribunal.*—Any person aggrieved by any decision of the Tribunal may, within thirty days from the date of such decision, prefer an appeal to the High Court against such decision:

Provided that the High Court may entertain the appeal after the expiry of the said period of thirty days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

8. *Mode of payment of rent.*—The amount of rent payable under this Ordinance shall, subject to any rules made thereunder, be paid by the Government to the person or persons entitled thereto by means of cheque:

Provided that the amount of rent payable under this Ordinance in respect of a cashew factory vested in the Corporation in pursuance of an order made under sub-section (3) of section 3 shall be paid by the Corporation.

9. *Service of notice or order.*—(1) Every notice or order issued or made under this Ordinance shall,—

(a) in the case of any notice or order affecting a corporation or firm be served in the manner provided for the service of

summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure. 1908 (Central Act V of 1908); and

(b) in the case of any notice or order affecting an individual person (not being a corporation or firm), be served on such person—

(i) by delivery or tendering it to that person; or

(ii) if it cannot be so delivered or tendered, by delivering or tendering it to any officer of such person or any adult male member of the family of such person, or by affixing a copy thereof on some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain, or failing service by these means,

(iii) by registered post.

(2) Where the ownership of the cashew factory is in dispute, or where the persons interested in the cashew factory are not readily traceable and the notice or order cannot be served without undue delay, the notice or order may be served by publishing it in the Gazette and where possible, by affixing a copy thereof on any conspicuous part of the premises of the cashew factory to which it relates.

10. *Protection of action taken in good faith.*—(1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government or the Corporation for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Ordinance or any rule or order made thereunder.

11. *Bar of jurisdiction of civil courts.*—Save as otherwise expressly provided in this Ordinance, no civil court shall have jurisdiction in respect of any matter which the Government or the Corporation or the Tribunal are or is empowered by or under this Ordinance to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Ordinance.

12. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out the purposes of this Ordinance.

(2) Every rule made under this Ordinance shall be laid as soon as may be after it is made, before the Legislative Assembly while it is in session for a total period of fourteen days which may be comprised in one session or in two successive sessions and if, before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

JOTHI VENCATACHELLUM,
GOVERNOR.